IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

SUMMONS FOR JUDGMENT NO.193 OF 2007
WITH
SUMMARY SUIT NO.1435 OF 2006

Azmat Printers. ...Plaintiff.
Vs.
Fortune Foods Ltd. ...Defendant.

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Mr. S.R. Rawell i/b. Rawell & Kudrolli for the Plaintiff.
Mr.Ramesh Sarogi for the Defendant.

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CORAM : DR.D.Y.CHANDRACHUD, J.
4th June 2007.

P.C.:

At the hearing of the Summons for Judgment, Counsel appearing on behalf of the Defendant has placed on record, a copy of the order passed by the BIFR on 12th February 2007 under the Sick Industrial Companies (Special Provisions) Act, 1985. The order of the BIFR contains a statement that the authority was satisfied that the Defendant herein is a sick industrial Company within the meaning of Section 3(1)(o) of the Act. Consequently, directions were issued by the BIFR directing the Operating Agency to prepare a scheme for revival of the Defendant, if feasible.

The present suit was instituted on 17th August 2005. The

aforementioned order of the BIFR contains a statement of fact to the effect that the Defendant had filed a reference to the BIFR on 29th November 2004. In view thereof, having regard to the provisions of Section 22, the suit could not lie on the date on which it was instituted without the permission of the BIFR. Counsel appearing on behalf of the Defendant undertakes on instructions that the Defendant will inform the Plaintiff after the disposal of the proceedings before the BIFR or, as the case may be, AAIFR. Undertaking accepted.

In view of the circumstances narrated hereinabove, Counsel appearing on behalf of the Plaintiff seeks the permission of the Court to withdraw the suit with liberty reserved to the Plaintiff to move the BIFR for appropriate permission under Section 22 of the Act and thereafter, to adopt appropriate proceedings in accordance with law. The suit is accordingly permitted to be withdrawn as prayed with liberty as reserved.

Refund of Court fee, if any, as per rules.

In view of the disposal of the suit, the Summons for

Judgment does not survive and is accordingly disposed of.

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